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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EMILY R. FRIED,

MEMORANDUM & ORDER

05-CV-5522 (NGG) (AKT)

Plaintiff,

-against-

THE NEW YORK STATE OFFICE OF
CHILDREN AND FAMILY SERVICES et
al.,

Defendants.

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NICHOLAS G. GARAUFIS, United States District Judge.

On July 18, 2008 Magistrate Judge A. Kathleen Tomlinson issued a Report and Recommendation (“R&R”) in which she recommended that the court deny Emily R. Fried’s (“Fried”) motion for an extension of time to effect service upon the Defendants.

Now before the court are Fried’s objections to the R&R, dated September 8, 2008. In an Order dated August 26, 2008, the court cautioned Fried that the focus of her objections should be on “Judge Tomlinson’s conclusions, elaborated on pages 7 through 16 of the R&R, that Fried has not shown good cause for failing to serve process in a timely manner and that the court should not exercise its discretion to grant Fried an extension of time to effect service.” In spite of this Order, Fried’s objections are wholly focused on unrelated matters, such as Judge Tomlinson’s characterization of Fried’s claim and wrongs allegedly perpetrated by the Defendants.

The court notes that although Fried is now proceeding pro se, she has been represented from before the commencement of this action until only a short while ago. Beginning before the

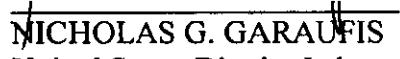
filings of her Complaint on November 28, 2005, she was represented by Brian Raum, the attorney responsible for the faulty service upon Defendants. Then, beginning on January 3, 2007, she was represented by Rick Ostrove and Matthew Porges. Soon after Judge Tomlinson issued the adverse R&R, Fried notified Mr. Ostrove and Mr. Porges that she no longer wished for them to represent her. Fried has therefore submitted her objections on her own, without expert legal assistance.

The court has conducted a de novo review of the parties' briefs in this action, and finds the R&R to be well-reasoned and thorough. In light of the acknowledged lack of good cause for the erroneous service, the lack of an excuse for the failure to correct the erroneous initial service,¹ and the likelihood that most of the claims in the Complaint were time-barred to begin with, the court agrees with Judge Tomlinson that this is not an appropriate case for the exercise of its discretion to excuse a failure to comply with the requirements of Fed. R. Civ. P. 4(m). The R&R is therefore adopted in its entirety, and Fried's motion to extend the deadline for service of the Complaint is DENIED.

SO ORDERED.

s/Nicholas G. Garaufis

Dated: Brooklyn, New York
September 23, 2008


NICHOLAS G. GARAUFIS
United States District Judge

¹ The court wishes to stress that Fried was represented during the time that service was initially attempted to be effected, when Defendants notified Fried that service was faulty, and during the prosecution before Judge Tomlinson of Fried's motion to extend the deadline for service of her Complaint.